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The Los Angeles Bar Association BULLETIN

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CONVENTION PREPARATIONS

STATE BAR PLEBISCITE

BAR COMMITTEE FAVORS REFORM

PRO TEM JUDGES NOT NECESSARY

IMPORTANT MUNICIPAL COURT RULING

THE PRESENT ECONOMIC CRISIS

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Los Angeles Prepares for the American Bar Association

By Ewell D. Moore, Member of California Bar*

SHOULD you be among the fortunate thousands who will come to Los Angeles next July for the American Bar Association Convention—and it is not too early to be thinking about it—you will be greeted and feted in a manner you will long remember. Los Angeles is used to conventions; it is "convention conscious." But this is one convention it regards as out of the ordinary—something special, to be thought of and prepared for months in advance. Therefore, Los Angeles is already making plans, unusual in character, for the comfort and entertainment of the delegates, their wives and other guests who attend the sessions of this great annual gathering of lawyers.

Those who journey across the continent to this Southwest metropolis for this year's convention will not be among strangers altogether, for there is in Los Angeles County the greatest aggregation of lawyers who came "from other states" to make their homes and lend their talents to a comparatively new community, ever gathered anywhere; men and women who speak the language and share the problems of lawyers everywhere. There are almost 6,000 lawyers in this one California County nearly half the total number of lawyers in the State of California. Most of them are keenly interested in making the convention the greatest ever held, and it promises to be just that.

Perhaps never before has the lawyer, in all the long and colorful history of the profession, faced a more critical period; certainly at no time in the past has there existed so obvious a necessity for unified action, or a more firm determination to meet the attacks, solve the real problems that beset us upon every side, and restore the profession to the deservedly high position it once occupied, and which it will again occupy.

This crisis, and the knowledge that a real and concerted movement with tremendous momentum, is being sponsored by the American Bar Association to face and overcome it, makes the Los Angeles Convention one of exceptional interest and promise. Nor is this interest confined to lawyers. The public is concerned—deeply and properly concerned; for the public has a right to, and does, expect the Bar to assume and hold leadership in needful reforms in the administration of justice, in the suppression of crime, in providing the procedure for obtaining speedy justice, and the clearing of its ranks of faithless members.

Knowing that these subjects will be discussed, as they have been at all recent conventions of the American Bar Association, and that perhaps a real constructive program will be adopted to improve the waning confidence in the law, promises to give the 1935 Convention a "news value" which no previous convention has had.

In short, it will furnish a great opportunity for the legal profession to recapture public notice and bring new confidence.

The Entertainment Programs

But let us see what Los Angeles, and the Bar of California, promise for the lighter moments of its guests. First, it will provide a convention meeting place in the very heart of the business section. Philharmonic Auditorium is "five minutes from anywhere" in downtown Los Angeles. It faces beautiful Pershing Square, picturesque and tropical in character. It is only across the street from the Biltmore Hotel where doubeless the greatest number of delegates will stay. All around are the clubs, theatres and good restaurants. So much for the staging of the convention.

During the entire week of July 15th there will be things for the delegates and their families to see and to do beside sitting in convention sessions. The General Committee of Arrangements, of which Honorable Gurney E. Newlin, past president of the American Bar Association, is chairman, will see to that. Every day the great Huntington Library at Pasadena, with its priceless and world famous display of art and literature, will be open to visitors. Special busses will take members and their wives to the Library, a delightful trip of fifteen miles, daily. An unusual exhibit of historical legal documents, of extraordinary interest to lawyers, will be arranged. When

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you have seen the wonders of this exhibit, nowhere else available in this country, you will be entertained with refreshments and taken for a trip through beautiful Pasadena and its environs.

Of course, excursions will be arranged to view the great motion picture studios, where visitors will be shown pictures in the making and guests will see in person picture stars whose faces and voices have been made familiar to the public everywhere from the screen.

"MAKING OF THE CONSTITUTION"

The Los Angeles Bar Association will reproduce its pageant given last November, of "The Making of the Constitution."

This wonderful pageant was produced in the largest auditorium in Los Angeles, holding some 6,000 people, and thousands of the public were turned away. It will be reproduced for the Convention in the Philharmonic Auditorium, the same theatre in which the Convention meets. No event of an historical character attracted as much interest with the public as this pageant. Even Will Rogers, the "Sage of Santa Monica," became enthusiastic about it. In his syndicated daily comment he had this to say:

"Well sir, here is something I would like to see all your cities and towns do.

"The Los Angeles Bar Association put on a pageant called 'The Making of the Constitution.' (They say it was originated in Kansas City.) Well, it's a great thing. It shows Benjamin Franklin, Washington, Madison, Hamilton, and all those old 'rope wigs' fighting during the making of our Constitution. Young as well as the old will profit by it, and really enjoy it.

"Write and get your information from the L. A. Bar Association. You can put it on for some good charity, or free admission.

"I am not press agent for any bar association. I just saw it, and thought it was great, and it's a great thing to do at this time. It's not expensive to put on, just the renting of the costumes is all.

"Do this, and you will thank me some day.

Yours,
WILL ROGERS."

There will also be the opportunity to see and hear the "Symphony under the Stars" at the famous Hollywood Bowl, unique in its setting among the mountains that rise behind the cinema capital of the world.

(Continued to page 166)

Investigation of the State Bar by Legislation Committee

Plebiscite of Members Taken

By Philbrick McCoy, of the Los Angeles Bar, Counsel for State Bar

ON January 23, 1935, Messrs. Brennan and Hornblower of San Francisco succeeded in having the Assembly authorize an investigation of the State Bar. Thereupon, Speaker Craig of the Assembly, appointed Mr. Brennan (chairman), and Mr. Hornblower of San Francisco, Mr. Gardiner Johnson of Berkeley, Mr. Claude Minard of Fresno, and Mr. Ralph W. Evans of Los Angeles, as members of the committee.

In order to get all of the views, apparently, he appointed two members known to be antagonistic to the State Bar, two friends of the State Bar, and one member whose attitude was indeterminate. The resolution authorizing the investigation provides that the committee shall "investigate and make a thorough study of any and all matters relating to the present status, financial condition and mode of conduct of the State Bar of California, in order that the committee may recommend to the Legislature such legislation as it may deem appropriate, necessary and proper as a result of its investigation and study."

The resolution also provided for public hearings and authorized the committee to do anything necessary to make a full and complete investigation of the matters above noted, but did not carry an appropriation.

Several public hearings were had, both in Los Angeles and in San Francisco at the offices of the State Bar. During the course of the investigation, the committee listened to voluminous testimony from those who felt that they had some complaint to make against the State Bar. Much pertinent testimony was offered by several officials of the State Bar, including members of the Board of Governors, not only in reply to the criticisms, but also in explanation of the constructive work of the State Bar in the past seven years.

The first hearing in Los Angeles was conducted by Ralph W. Evans, a member of the committee. He was represented by Frank Tyrell, former president of the Lawyers Club, and J. Donald McGuire, as counsel. The Los Angeles Bar Association, as such, was not invited to participate on that occasion, or any subsequent occasion. At the second hearing in Los Angeles, Mr. Evans was joined by Mr. Johnson and Mr. Minard.

Substantially all of the testimony offered by those who appeared before the committee to criticise the State Bar related to its alleged failure to prosecute unlawful practice matters against large financial institutions and its alleged failure to give proper heed to the complaints made by the Lawyers Club of Los Angeles. Other testimony related to the refusal of the Committee of Bar Examiners to recommend for admission two applicants found by the committee to be unfit.

The witnesses who expressed themselves as favoring a change in the State Bar Act stated that their reason for desiring such a change was to divest the Board of Governors of the present complete control of the conduct and policies of the State Bar, subject to the recommendations made at the annual meetings, and to place a large part of that control in the hands of the few members who attend those meetings. This view was strongly assailed by various members of the Board of Governors and others appearing on behalf of the State Bar, who pointed out that such a division of responsibility could only result in confusion and inefficiency, and might render the State Bar a possible tool of small, but well organized, minorities within the ranks of the profession.

San Francisco Hearings

At the San Francisco hearings, all of the members of the investigating committee were in attendance at one time or another. There was considerable discussion with reference to the alleged mismanagement of the finances of the State Bar. At these hearings other members of the Board of Governors testified at length in answer to the criticism. Mr. Brennan took a very keen interest in conducting the investigation of these matters, although it appears that he was aware of all the essential facts. In this respect it is interesting to note that,

in substance, the principal current expenses of the State Bar became fixed items at a time when Mr. Brennan was a member of the Board of Governors, a member of the Budget Committee and the Secretary and Treasurer of the State Bar.

In his annual report as Treasurer to the Del Monte Convention in September, 1933, Mr. Brennan observed that the report of the Budget Committee, of which he was a member, described in great detail the numerous purposes for which State Bar moneys were appropriated and expended, and that detailed monthly and annual statements of such expenditures were always open to the inspection by members of the Bar. His report as Treasurer and the report of the Budget Committee were approved at the annual meeting.

At the San Francisco hearings Mr. Hornblower evidenced considerable interest in the problems relating to admissions to practice law. It will be remembered that Mr. Hornblower was the author for the "Hornblower Bill," adopted in 1929, amending section 24 of the State Bar Act, materially lowering all previously existing qualifications for admission to practice law in California. This situation was corrected in 1931, by further amendment at the instance of the State Bar with the approval of the Third Annual Meeting at Pasadena.

When, at the conclusion of the hearings, it appeared that no remedial legislation was necessary by way of amendment to the State Bar Act, Mr. Brennan, with the approval of Messrs. Hornblower and Evans, constituting a majority of the committee, determined, over the protest of Messrs. Johnson and Minard, to conduct a plebiscite among the members of the Bar on the question of "Do you favor repeal of the State Bar Act?"

As this is being written, the ballots are being received in San Francisco and the result of that plebiscite will be known soon. This plebiscite, sponsored primarily by Mr. Brennan, is being financed through his efforts. The State Bar had nothing to do with the mailing of the ballots; however, the signatures on the ballots received will be checked against the official records of the State Bar, and they will be counted under State Bar Supervision. So far as we have been able to ascertain the committee has not yet filed its report with the Legislature. Several bills introduced by Messrs. Brennan, Hornblower, and Evans, among others, seeking to amend or repeal the State Bar Act, are now pending before the Judiciary Committee of the Assembly.

[NOTE: A further report on this subject will appear in the next issue of THE BULLETIN.]

RESULTS OF LOS ANGELES BAR ASSOCIATION PLEBISCITE ON MUNICIPAL JUDGE CANDIDATES

Office	Candidates	Vote
No. 1	Rosalind G. Bates	72
	Joseph F. Chambers	963
	Thomas J. Clark	46
	Jesse E. Jacobson	48
No. 2	R. Morgan Galbreth	934
No. 3	Wilbur C. Curtis	845
	Edward C. Purpus	263
No. 4	Alfred E. Paonessa	263
	Edward A. Penprase	825
	W. Frank Shelley	31
No. 5	Oda Faulconer	613
	Samuel A. Rosenthal	482
No. 6	Arthur Crum	1029
	Saul S. Klein	111
No. 7	Leslie E. Hubbard	53
	Albert E. Marks	197
	Irvin Taplin	880
No. 8	William R. McKay	924
No. 9	Irl D. Brett	225
	Newcomb Condee	668
	Frederick M. Hall	72
	Ernest K. Maine	15
	J. George Ohannesian	151
No. 10	Lynden Bowring	485
	George D. Higgins	18
	Joseph Marchetti	166
	Delamere F. McCloskey	29
	Stanton Rippey	19
	Jarvis R. Wilder	333
	Sydney M. Williams	6

Junior Bar Association Officers Elected

The following officers of the Junior Barristers of the Los Angeles Bar Association were elected at a meeting of that group on Wednesday, February 20, 1935:

E. Avery Crary, Chairman;
Kenwood B. Rohrer, First Vice-Chairman;
Clifford Maurice, Second Vice-Chairman;
William A. Page, Secretary-Treasurer.

The Executive Committee of the Junior Barristers for the year 1935-36 will consist of the following men:

Lewis W. Andrews
Bates Booth
Kenneth N. Chantry
Sidney A. Cherniss
Thomas J. Cunningham
Philip M. Davis
Richard E. Davis
A. W. Day
Edward T. Dillon
Lawrence E. Drumm
Eugene M. Elson
John J. Ford
Douglas C. Gregg
W. I. Gilbert, Jr.
Ford W. Harris, Jr.
Hallack W. Hoag
Paul R. Hutchinson
Ned Marr
Lowell Matthay
Marcus A. Mattson
Pat A. McCormick
John C. Morrow
Milo V. Olson
H. L. Rose, Jr.
Milford Springer
Bob Wheeler
Lucien W. Shaw
Earl Wright

The committee has already started preparing for the entertainment of the members of the Junior Bar Conference, which is the junior section of the American Bar Association and which holds its annual convention in the City of Los Angeles, July 15th to 20th, 1935.

Law Reporting Committee Favors Reform

Too Many Written Opinions. State Bar Contacted. Congestion in Appellate Court

RESOLUTION

WHEREAS, the Board of Trustees of Los Angeles Bar Association is this fourteenth day of February, 1935, in receipt of the report of the Association's Law Reporting Committee for the year 1934, which report has had the consideration of the Board of Trustees,

NOW, THEREFORE, BE IT RESOLVED that it is the view of the Board that the compulsory writing and publishing of California judicial opinions is a matter which requires immediate consideration and reform; and that the State Bar of California be, and it is hereby, respectfully urged to make a complete investigation of the subject and to adopt and promote such measures as it may deem best fitted to correct and improve the existing situation in California;

AND BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the State Bar of California, and a copy be sent to the Committee on Law Reporting of the Los Angeles Bar Association; that the assistance and co-operation of this Board be, and it is hereby, respectfully tendered to the State Bar; and that the aforesaid Committee of the Los Angeles Bar Association be, and it is hereby, directed to effect contact with the State Bar and to co-operate with it upon the subject in question.

The undersigned, Executive Secretary of the Board of Trustees of the Los Angeles Bar Association, hereby certifies that a resolution, of which the aforegoing is a true copy, was duly adopted by said Board of Trustees at a regular meeting thereof at Los Angeles, California, on the 14th day of February, 1935.

Dated, Los Angeles, California, February 15, 1935.

LOUIS J. ELKINS,
Executive Secretary.

THE Law Reporting Committee of the Los Angeles Bar Association has submitted its report for 1934 to the Board of Trustees and the Board has adopted a resolution urging the State Bar to make a thorough investigation and to promote measures to improve existing conditions. The report follows:

Your Committee on Law Reporting begs to submit the following report for the year 1934:

I. Your Committee has felt that the problems incident to law reporting, such as bound volumes, delay of publication, advance sheets and uniform pagination, were matters of state-wide importance and should be of primary concern to the State Bar of California. Accordingly we established contact with the officers of the State Bar and as a result thereof a special sub-committee was appointed, headed by Mr. Albert Rosenshine of San Francisco.

We are informed that this committee has been very actively conferring with the various publishers, law reporters and courts and it is our hope that their report, when published, will provide a solution for some of the vexing problems we have had in law reporting. Despite the fact that the contract with Bancroft-Whitney Company was renewed in October, 1934, for a further period of five years, we believe when the committee makes its report that the publishers will see fit to carry out their recommendations. Furthermore, we do not at this time deem it wise for our committee to propose legislation, for it may be in conflict with the plans of the State Bar.

II. Written Opinions. Our Committee has always felt that there were too many written opinions and we are emphatically

against the provision of our Constitution, viz. Article 6, Subdivision 2, requiring compulsory written opinions.

Since our last report we find considerable interest manifested in this problem.

Too Many Written Opinions

Honorable Albert Lee Stephens, Presiding Justice of the Appellate Court, and Honorable William P. James, Judge of the Federal District Court, have expressed themselves vigorously on the question of written opinions.

Judicial Council

The Judicial Council of California, in their Fifth Report, pages 15-16, after making a comparison of the output of the Appellate Department of the Superior Court with that of the District Court of Appeal, in favor of the former, states:

"This presents a persuasive argument in favor of memorandum opinions in cases which do not involve new points of law or constitutional construction. Were that system approved, we might reasonably expect the present appellate tribunals to dispose of the existing congestion, which, in the Los Angeles districts, has frequently resulted in appeals not being heard for twenty-four to thirty months after transcripts were filed. It would also greatly reduce the cost to the State for the printing of published decisions, and would measurably relieve the lawyers of heavy expense for the purchase and storage of reports. It is generally recognized, as stated by Justice Stone of the United States Supreme Court, that unless there be some restraint on the length and number of published opinions, it is inevitable that the present system will break down of its own weight."

In its report to the State Bar Convention (Proceedings of the Seventh Annual Meeting, State Bar of California, 1934, at page 199) the Committee on Administration of Justice had this to say:

"Each year sees a veritable flood of cases pour out of the appellate courts of this State, and all of them entitled to the dignity of precedent. It is both difficult and expensive for lawyers to attempt to keep track of the cases having a real precedent value in this inundation. This Committee believes that appellate decisions having no permanent value should be handled as memorandum opinions, and not officially published as 'precedent'. This matter will be taken up with the justices of the appellate courts. As noted below, a special study is being made of this subject."

The Right Honorable Lord Tomlin, in the course of an address before the American Bar Convention, in 1934, said:

"* * * There is no doubt that the system of Precedents is tending to become in some respects somewhat burdensome. This I believe to be due in part at any rate to overmuch law reporting. We suffer from it in England and you here in the United States are I fancy still worse off with your State Courts and your Federal Courts, all the cases in which are reported.

"There is only one thing worse than overmuch law reporting and that is over-much legislation. I do not suppose we shall ever get rid of the latter but I think that it should be possible to reduce the former. In my judgment many too many cases are reported and **I should like to see some plan put into operation by which the reporting of cases was controlled and the number reported strictly limited.** I would use the words Coke 'Such a farrago of authorities it cannot be but there is much refuse.'" (Blackface ours.)

The problem of congestion in our Appellate Courts is being vigorously attacked and several bills have been introduced which will relieve the congestion, but our Committee is of the opinion that this relief will only be temporary unless the problem of written opinions is solved. If, instead of compulsion, our courts had discretion in the writing of opinions, of limiting them solely to cases that are reversed or modified or where constitutional questions are involved, or those of general interest, we might reasonably hope for fewer and better opinions. That this hope is well founded can be seen from an examination of the reports of the Court of Appeals of New York, where written opinions are leading cases and land marks in the law of the state. It takes more time to write an opinion than to examine the record, brief and authorities, and it takes more time to write a short opinion than to dictate a long one. If, therefore, written opinions are made discretionary, with more time at their disposal the judges will be able to spend more time in conference and in discussion, which will not only improve the quality of the opinions, but will expedite their rendition. As Professor Frankfurter has said:

"* * * For expedition in decision is as much a condition as an end of justice. Judgments are surer and opinions more accurate if they proceed from minds freshly informed by oral argument. The strain of an unmanageable load of business destroys the serenity of spirit essential to the painful process of hard thinking on which are dependent wise decisions embodied in closely knit opinions."

Respectfully submitted,

Law Reporting Committee,
By Maurice Saeta,

Feb. 7th, 1935. *Chairman.*

Special Committee Report on Pro Tem Superior Court Judges

CALENDAR KEPT UP TO DATE. PRO TEM JUDGES NOT NECESSARY.

IN transmitting the report of a Special Committee of the Judiciary Committee on the subject of Judges Pro Tem, Mr. Kemper Campbell, Chairman of the Judiciary Committee, says:

"The problems presented by the appointment of *pro tem* superior court judges were considered at a number of sessions of the full committee and the report of the special committee was duly adopted by the Judiciary Committee. It should be a matter of extreme gratification to Los Angeles Bar Association that through its efforts and the cooperation of the calendar judge and various presiding judges a condition of serious congestion of the calendar of the trial court has been eliminated. This has been accomplished primarily through an increase in man power.

"In 1927, through the efforts of representatives of Los Angeles Bar Association, ten additional judges were provided. In 1931, likewise through the efforts of representatives of the Association, twelve additional judges were provided. The master calendar system was recommended by Hon. Harry Hollzer, formerly Director of Research for the Judicial Council. My recollection is that the superior court judges were reluctant to adopt the system. The Board of Trustees of the Bar Association strongly approved its adoption and as a result of the Association's urgent recommendation the system was put into effect.

"That the master calendar system is efficient is now almost unanimously conceded and I think it only fair to say also that Judge McComb's administration of the system is entitled to most hearty commendation.

"The figures prove that the output of Los Angeles County judges far exceeds the average per judge throughout the state, notwithstanding the fact that in a few individual cases judges are not, according to reports submitted to us, performing their full quota of the current work. Therefore, there is no plan that is immediately available that will take the place of a requisite number of judges to perform the volume of work required to be done.

"From a standpoint of expense to the public the transfer of outside judges to this county does not save money. The bulk of the compensation must be paid by Los Angeles County in any event. In addition to this the county must pay the hotel and traveling expenses of the transferred judge. These expenses in most instances equal the portion of the salary paid by the State of California, the result being that it would be just as inexpensive both for the state and the county of Los Angeles if instead of relying upon judges transferred from other counties the number of superior court judges to be elected in Los Angeles County were to be increased.

"However, the recent tendency has been to restrict assignments to this county to especially qualified trial judges and there are many cases in which local feeling is strong so that it would seem desirable to avail ourselves of the services of outside judges. Then, too, it is just as well that we have before us an incentive to improve our methods in the handling of litigation and also to raise the standard and efficiency of the judiciary. By limiting the panel of judges to a number less than actually required the incentive is always present."

Special Committee Report

The Special Committee's report to the Judiciary Committee, follows:

"Your Special Committee, to whom was referred the question of attorneys chosen as temporary judges of the Superior Court of Los Angeles County, have investigated the situation with respect to the calendar and with respect to the appointment and service of these attorneys as judges. We have taken a plebiscite asking certain questions of the persons appointed as temporary judges and also other questions of the attorneys for the litigants in cases which were heard before these judges. We have also had before your Committee personally Judge Marshall F. McComb, in charge of the trial calendar of the Superior Court, who has given you information on that phase of the work direct.

"While the plebiscite taken of attorneys

for litigants and attorneys who were chosen as judges *pro tem* shows a large majority in favor of the practice of having temporary judges chosen in this manner, and while Judge McComb favors the continuance of the practice, your Committee is not convinced that the continuance of the practice is either necessary or advisable.

"The statements given by Judge McComb show that all trials can be had within thirty-five days of the time when request is made. This fact indicates that there should be no need of the continuance of the practice of choosing temporary judges.

TEMPORARY JUDGES UNNECESSARY

"While our investigation shows that there are a few judges of the Superior Court of this county who are not doing their full duty, yet the most of them are co-operating in every way. With the out of county judges that are assigned to us by the Judicial Council and the appointment of an equivalent of two judges *pro tem,* the calendar is being kept up and has been kept up for approximately a year, and consequently, from these circumstances we again can see no necessity of continuing the practice of choosing temporary judges from among the attorneys.

"It is true that the number of filings on civil cases in the county is gradually increasing and that in this connection Judge McComb reports that approximately fifty-six judges are required to transact the business of the court and keep the calendar up to date. However, the fifth report of the Judicial Council (page 11) for the period ending June 30, 1934, shows that for the last fiscal year of the report, namely, July 1, 1933, to June 30, 1934, that only an average of four judges, and a fifth for five months, from out of the county have been assigned to this court. We feel that this is the way to take care of the extra man power needed to do this work.

"Furthermore, in this connection the statistics compiled by the judges in connection with judicial salaries will show that the output per judge in this county is far greater than the output of any other Superior Court of the State. If this condition prevails, we see no reason why the problem should not be handled directly through the Judicial Council by assignment to this county of out of county judges who certainly can afford the time here.

"We are of the opinion that at this time there is no need for an increase of the number of judges to be elected in the Superior Court of this county and that such number should not be increased nor should it be diminished.

"From conversations with the presiding judge of the Superior Court and with various members of the Judicial Council, we are convinced that the proper co-operation between these representatives will result in the assignment to this county of the proper number of capable judges to keep the calendar up in the splendid manner which its records now show.

"Your sub-committee feels from their investigation that the use of lawyers as judges *pro tem* in our courts is fundamentally wrong for the following reasons:

"1st: That litigants are entitled to have their property rights and liberty adjudicated by duly qualified elected judges;

"2nd: That the practice tends to create suspicion and disrespect of the courts by having attorneys representing adverse interests stipulate to their cases being tried by judges *pro tem;*

"3rd: That the practice tends to permit the acting judges from failing to do their full duty and taking care of the work of the Courts, realizing that if the work is not done by them that it will be taken care of by the appointment of judges *pro tem;*

"4th: We feel that such judges *pro tem* should be paid some proper amount for such service and that no adequate or proper system has yet been advanced for the payment for services of these judges *pro tem,* and in fact, Judge McComb says that he does not believe they should be paid anything at all, which we feel is not sound public policy;

"5th: That in the past embarrassment to attorneys for litigants has arisen by reason of either the suggestion that some proper fee should be paid to the judge *pro tem* by the litigants or from the inability of one party to pay where such suggestion has either been made or has been agreed to;

"6th: That the method practiced in the past of conscripting lawyers for this service is not the proper practice or method for selecting judges *pro tem* and this practice is an additional reason why the entire practice of judges *pro tem* should be discontinued.

"We, therefore, recommend that the practice of choosing attorneys as temporary judges of the Superior Court of this county be discontinued.

"In the event the foregoing recommendation is not concurred in, we recommend that if *pro tem* judges are to be chosen in the future that certain changes be initiated with respect to their selection, as follows:

"(a) That the Bar Association choose and recommend a list of attorneys from which the calendar judge may make selections;

"(b) That the attorneys so designated shall have practiced law at least fifteen (15) years and shall be well, favorably and widely known to the members of the Bar;

"(c) That the attorneys so selected shall be formally requested by the Trustees of the Bar Association to agree to serve in not to exceed two cases during a calendar year, and that they will so serve at any time when called upon if not actually engaged in the trial of a case;

"(d) That the list of such attorneys be confined to lawyers of conceded ability and whose services are requested upon the basis of a personal contribution to the public welfare.

Respectfully submitted,
WARREN E. LIBBY,
EARLE M. DANIELS,
Special Committee on Judges *Pro Tem.*

JUNION BAR COMMITTEE FOR NATIONAL CONVENTION APPOINTED

Appointment of E. Avery Crary, president of the Junior Barristers, as chairman of the Junior Bar Committee for the national convention of the American Bar Association to be held in Los Angeles the week of July 14 was announced this week.

The appointment of Crary was made by the Executive Committee of the Los Angeles Bar Organization for the 1935 Annual Meeting of the American Bar Association. At the same time, it was announced by Gurney E. Newlin, chairman of the committee, that Grant B. Cooper, Lowell Matthay, Jack W. Hardy and Kenneth N. Chantry will serve with Crary.

Newlin pointed out that it will be the duty of Crary's committee to have authority over all matters pertaining to the particular entertainment of the junior members of the American Bar Association and the ladies accompanying them.

A committee to handle publicity for the junior bar group's activities will be in charge of Charles E. Sharritt, as chairman.

Massachusetts Rules Legislature Cannot Permit Practice of Law by Lay Agencies*

IN an able opinion, of vital significance in defining the powers of court and legislature over the practice of law, the Supreme Judicial Court of Massachusetts, on January 30, in reply to a query of the state senate, unanimously declared that the judicial department of the government has the power to control the practice of the law and the legislature can give permission to practice only subject to the requirements for admission to the bar established by the Court. The matter arose in this way: Each year, for several years, there has been introduced into the legislature of Massachusetts a bill to regulate the practice of law. Each time the bill has been presented to the legislature, it has been amended. In the 1934 legislature, the bill was so amended that the original bill was hardly recognizable. Instead of limiting the practice of law to lawyers, it enlarged the rights of banks, insurance companies, and the like.

This bill, as so amended, passed the house; and seemed to be about to pass the senate, when it was tabled, to permit a request to the Supreme Judicial Court for an advisory opinion "on the following important questions of law:

"1. In so far as the words 'practice of law' relate to the performance of the functions of an attorney or counsellor at law before the courts, it is constitutionally competent for the General Court to enact legislation forbidding or permitting such practice by corporations or associations or by individuals other than members of the bar of the Commonwealth?

"2. In so far as said words relate to the performance of the customary functions of an attorney or counsellor at law which do not involve appearance before the courts, is it constitutionally competent for the General Court to enact legislation forbidding or permitting such practice by corporations or associations or by individuals other than members of the Bar of the Commonwealth?

"3. To what extent are the forbidding or permitting of the exercise of the rights and privileges set forth in questions one and two and their regulation judicial rather than legislative functions?

"4. Is there any phase of the practice of law set forth in said pending bill to which or from which the General Court may by legislation admit or debar corporations or associations or individuals who are non-members of the Bar of the Commonwealth?

"5. Is it constitutionally competent for the General Court, in the form of exceptions to general provisions making it unlawful for corporations or associations to practice law in this Commonwealth, to grant special powers and privileges to various corporations and associations, substantially as set forth in sections one and two of said bill?"

The opinion of the Court with some minor omissions is as follows:

To the Honorable the Senate of the Commonwealth of Massachusetts:

* * * "It is inherent in the judicial department of government under the Constitution to control the practice of the law, the admission to the bar of persons found qualified to act as attorneys at law and the removal from that position of those once admitted and found to be unfaithful to their trust. While the judicial department cannot be circumscribed or restricted in the performance of these duties, appropriate and essential assistance in discharging them may be afforded by the enactment of statutes. As the questions are framed and as a general proposition, valid permission to practice law cannot be given by the General Court except subject to the requirements for admission to the bar established by the judicial department. Opinion of the Justices, 279 Mass. 607.

"So far as the practice of the law relates to the performance of the functions of an attorney or counsellor at law before the courts, it comprises mastery of the facts and law constituting the cause of action or legal proceeding of whatever nature, the preparation of pleadings, process, and other papers incident to such action or proceed-

* From **Unauthorized Practice News,** published by American Bar Association Committee on Unauthorized Practice of the Law.

ing, and the management and trial of the action or proceeding on behalf of clients before judicial tribunals. These matters closely concern the courts. Legislation forbidding such practice of the law by corporations or associations, or by individuals other than members of the bar, would be within the competency of the General Court. It would tend to enhance the effectiveness of the judicial department. Crimes might be established for the infraction of prohibitions of such practice of the law. G. L. (Ter. Ed.) c. 221, §41. Commonwealth v. Brant, 201 Mass. 458. Civil remedies in equity or otherwise for the prevention of such infractions might be provided and made plain.

"It would not be within the competency of the General Court to enact legislation designed to permit such practice of the law 'by corporations or associations or by individuals other than members of the bar of the Commonwealth.' A dual trust is imposed on attorneys at law: they must act with all good fidelity both to the courts and to their clients. They are bound by canons of ethics which have been the growth of long experience and which are enforced by the courts. Matter of Cohen, 261 Mass. 484. The relation of an attorney to his client is pre-eminently confidential. In addition to adequate learning, it demands on the part of the attorney undivided allegiance, a conspicuous degree of faithfulness and disinterestedness, absolute integrity, and utter renunciation of every personal advantage conflicting in any way directly or indirectly with the interests of his client. Only a human being can conform to these exacting requirements. Artificial creations such as corporations or associations cannot meet these prequisites.

"Practice of law under modern conditions consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces conveyancing, the giving of legal advice on a large variety of subjects, and the preparation and execution of legal instruments covering an extensive field of business and trust relations and other affairs. Although these transactions may have no direct connection with court proceedings, they are always subject to become involved in litigation. They require in many aspects a high degree of legal skill, a wide experience with men and affairs, and great capacity for adaptation to difficult and complex situations. These 'customary functions of an attorney or counsellor at law' (as they are described in question 2 of the order) bear an intimate relation to the administration of justice by the courts. No valid distinction, so far as concerns the questions set forth in the order, can be drawn between that part of the work of the lawyer which involves appearance in court and that part which involves advice and drafting of instruments in his office. In this country the practice of law includes both forms of legal service; there is no separation, as in England, into barristers and solicitors. It is of importance to the welfare of the public that these manifold customary functions be performed by persons possessed of adequate learning and skill, of sound moral character, and acting at all times under the heavy trust obligation to clients which rests upon all attorneys. The underlying reasons which prevent corporations, associations and individuals other than members of the bar from appearing before the courts apply with equal force to the performance of these customary functions of attorneys and counsellors at law outside of courts. Decisions of the courts, some of which deal with statutes, are unanimous on these points so far as we are aware. If these established principles as to the practice of law are ever to be changed, the judicial department of the government must act to that end.

* * * "The exception in lines 42 to 49 of §1 of the proposed bill enabling 'any bank or trust company lawfully doing business in the commonwealth,' notwithstanding the provisions of the bill, to furnish 'legal information or legal advice with respect to investments, taxation, stocks, bonds, notes or other securities or property' transcends in some particulars the limits permissible to those not members of the bar and would comprehend, if stretched in its limits, a considerable practice of law.

"It follows that the answers to questions 1, 2 and 4 are that legislation forbidding the practice of law as therein described by corporations or associations or by individuals other than members of the bar of the Commonwealth is permissible, but that legislation permitting the practice of law by such persons would not be constitutionally competent for the General Court."

American Legal History Society

IN 1933 the American Legal History Society was formed to encourage the study and advance the knowledge of the history of American law by locating and promoting the preservation of materials for research, by promoting the scholarly editing and publication of sources, materials, and reporting upon the progress from year to year in the discovery and editing of such materials.

The Society has issued a statement of its purposes and an appeal to those who may be interested in this very important work to become members. The officers are, President, Joseph H. Beale, Harvard University; Secretary-Treasurer, Francis S. Philbrick, University of Pennsylvania.

Secretary Philbrick, in his statement of the Society's aims, says:

"The sources of American legal history are, very large, inaccessible. Much of colonial legislation was never printed. Of printed legislation there exists no general index, and only few and inadequate indexes for individual colonies. Save for Stimson's very imperfect yet indispensable digest of 1886 (and two other aids of lesser scope) our state legislation is an untraversable wilderness down to 1925. Of colonial court reports hardly any are in print. The reports of almost all present-day lower courts are of course likewise unprinted, undescribed and unknown. And unprinted are practically all the other records—dealing with taxation, roads, schools, property titles and conveyances, mortgages, wills, vital statistics, the care of the indigent and insane, adoptions, naturalizations, and other matters—which embody our settled social organization under law. To the social, economic, governmental, and legal historian these are alike indispensable. Much work has been done since 1900 by the American Historical Association and other societies in providing inventories of state and, to a limited extent, of county archives; in various states such inventories are at this moment being prepared with aid from the CWA. Much more remains undone, however, than has been accomplished in the mere matter of description. Even more important is the problem of preservation. A very large part of colonial judicial records have perished; a large part of the early records of our younger states have already disappeared; and nobody unacquainted with the subject can imagine the ravages of fire, moisture, neglect and spoliation to which records now in existence are still subjected.

"The Society therefore plans, (1) to edit and publish, in a series of volumes, representative legal records of all kinds that are now accessible only in manuscript; (2) to encourage similar publications made under other auspices; (3) to supplement and integrate existing inventories of legal archives; (4) to provide scholarly bibiliographies of the legal history of every state; (5) to secure, if possible, the preparation of historical indexes to the legislation of every state, and a revised and improved edition of Stimson; and (6) to promote in every way the security of existing records and the betterment of archival practices.

"It also hopes to establish a quarterly *Journal*. No complete account of any aspect of our legal development *can* at this time be given. No accurate general sketches, even, are possible. What is needed is unpretentious, laborious spade work on the foundations for broader studies. Fields in which research is particularly needed might be indicated, specific topics could be suggested; but to do so would be fatuous, and ineffectual for the advancement of the Society's ends, since any work worth desiring must originate in individual interest. Hundreds of essays on our legal history which did so originate have already appeared in legal periodicals. The *Journal* would seek to encourage such writing by insuring the publication of essays of the highest quality.

"Even for the realization of its lesser hopes the Society must secure many hundreds of members. To accomplish its larger purposes it must ultimately require large funds, which only gifts can supply. The measure of its success must depend upon the support accorded to it by members of the bar.

"It is hoped that you will approve of its objects and become a member. It is also hoped that you and other lawyers in your state may be willing to advance its

Current Legislation Proposals in Criminal Procedure Field

By Paul Sanders, Assistant to the Director of the National Bar Program

THE Hauptmann case brought some aspects of criminal procedure very vividly to the attention of the public. Alibis played a great part in the trial, both for the prosecution and the defense. In that connection, it is interesting to note that Attorney General Wilentz did not make use of the law passed in New Jersey in 1934 requiring the defendant in a criminal case to give advance notice of an alibi defense. Such a measure has been approved by the American Bar Association, and many bar association committees are at the present time urging its passage in their respective state legislatures. The novelty of the law in New Jersey should not have deterred the prosecution, in view of the fact that the law has been in effect in several states for a great many years and has proved of untold value. It has never been challenged by the courts.

No case, barring one where a juror has died or become otherwise incapacitated, ever exhibited the need for the extra or alternate juror law more than did the Hauptmann case. Section 285 of the Model Code of Criminal Procedure of the American Law Institute which provides for such a law begins with the premise, "Whenever in the opinion of the court the trial is likely to be a protracted one . . ." Some of the jurors in this celebrated case were ill; luckily nothing serious occurred. The Committee on Criminal Procedure of the New Jersey State Bar Association, headed by W. A. Wachenfeld of Newark, is considering this matter and will make recommendations during this year.

Judge Trenchard's freedom in discussing the matter with the jury is based on the common law power of the judge to act as something more than a mere umpire. Section 325 of the American Law Institute Code would give to every judge the power to comment to the jury on the evidence and the credibility of witnesses. The usefulness of such procedure cannot be denied in a case that has lasted for weeks and where the jurors have heard much conflicting testimony, but there is need for such a guiding hand in cases that do not last so long and do not have such great notoriety.

A provision allowing comment by the court or counsel upon the failure of an accused person to testify in a criminal case is receiving attention in several legislatures. In Missouri such a bill has the backing of the Committee on the Legal Aspects of Criminology of the Missouri Bar Association. John T. Hubbard of the Litchfield County Bar Association (Connecticut) has drawn and introduced a similar bill in his state. The Georgia Bar Association is making a double-barrelled attack upon the criminal procedure situation in its state through the activity of the Law Reform Committee.

A bill which includes portions of the American Law Institute Model Code and the recommendations of the American Bar Association has been introduced in the Senate and in the House of Representatives.

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purposes by creating an active committee of your state bar association (if such does not exist) to deal with legal history; by giving the subject a regular and dignified place in the annual program of the association; by offering prizes for studies of the state's legal history; and by supporting financially in other ways serious studies of its legal records. It seems, however, necessary to say that *it is not worth while doing anything unless high standards of scholarship are insisted upon,* both in research and in form of publication. To this end, the cooperation should be sought of the historical department of a university, of your state historical library, and of your state archivist.

"The dues for ordinary membership in the Society are $2.00 annually; for a sustaining membership, $10.00. Any person is eligible to be a member. Suggestions regarding tasks which the Society might undertake, and information regarding records, official or (particularly) private, valuable for the purpose of legal history will be gratefully received."

The address of the Society is 3400 Chestnut street, Philadelphia, Pa.

Municipal Court Reverses Rule of Superior Court Appellate Divison in Case Under Section 1714 1-4

Judge Charles B. MacCoy of the Municipal Court, recently rendered an opinion in an automobile accident case, under Section 1714¼, C. C., which is of more than ordinary interest to lawyers.

The Opinion

PLAINTIFF was the insurance carrier of Phillip Begue (hereinafter referred to as the "Insured") as to his Packard car, which at the time involved herein was being driven with his permission by his daughter-in-law; the facts being such, that measured by the law of agency, she was not the owner's "agent" in the driving of the car.

The other car involved was a Ford owned by Margaret L. Davis; at the time in question she was riding in it, and it was being driven by her husband. The time was 10:00 A. M. on a clear day.

The Packard was driven westerly on Sunland Boulevard, and the Ford southerly on Wheatland Avenue. That locality was sparsely built up. The paved portion of Sunland there, is wide enough for three lanes of traffic, while the paved portion of Wheatland is wide enough for only two lanes, and ends at Sunland. For that locality the speed of 45 miles an hour is legal.

The driver of the Packard said she was going between twenty and twenty-five miles per hour as she approached Wheatland; a disinterested witness (who was about three hundred feet south of Sunland) said her speed was about forty miles per hour right up to the time of the collision, that the Ford slowed to almost a stop at the edge of Sunland and then just as the Packard was reaching Wheatland slowly pulled into Sunland turning somewhat to the east in a left turn, and that the side of the Packard came in contact with the right front of the Ford, which was pulled around and came to a stop at the northwest corner. The driver of the Packard said she had not seen the Ford until the instant of collision, that she lost control of the Packard, which careened to the south side of Sunland and came to a stop at a distance estimated as from thirty to sixty feet west of Wheatland.

The plaintiff asked a judgment against the Davises; by cross-complaint Mrs. Davis asked judgment against both the owner and the driver of the Packard, and to that cross-complaint the cross-defendant plead contributory negligence.

I find that the said intersection was not obstructed within the definition of the C. V. A. I find the driver of the Ford guilty of negligence.

Donat vs. Dillan, 192 Cal. 426;
Noah vs. Black, 138 App. 236;
Alberts vs. L. A. Railway, 79 C. A. D. 476.

It was urged by the defendant that Section 1714¼ in effect imputes to an owner of a car the negligence of—

"Any person using or operating the same with the permission, expressed or implied of such owner . . ."

and that under such circumstances the owner is not only rendered liable for damages caused by his car, but is also deprived of any cause of action for damages to his car.

New York Case Cited Reversed

My search in California disclosed no reported case as closely in point as that of *Fiske vs. Haas,* decided by the Appellate Division of the Los Angeles Superior Court in December, 1932, Civil Appeals 1677, in which the court says:

"Section 1714¼ C. C. was not intended to and has not resulted in making the negligence of the driver of an owner's car, no agency involved, a defense to an action by owner against a joint tort feasor of the driver. We are of the opinion that Gochee vs. Wagner, 250 N. Y. S., 102, is a better reasoned decision than that in Secured Company vs. Chicago Company, 207 Iowa, 1105; 224 N. W. 88."

It is to be regretted that our court cited the decision in the N. Y. Sup. because that decision had been reversed more than a year previously by the Court of Appeals, 257 N. Y. 344; 178 N. E. 553.

In that case the lower court had upheld the judgment of the trial court in favor of an owner (who was not driving, but was riding in his car) against the driver of another car. The case dealt with a statutory provision similar to our Section 1714¼ C. C

The Court of Appeals reversed the lower court and the judgment, saying:

"When the respondent entered the car, he gained dominion over it, and the rule applicable under the statute in the absence of the owner ceased to apply. It was respondent's car, he was present and had the legal right to control its operation, and the negligent conduct of the driver was imputable to him. The mere fact that he chose to sit on the rear seat and refrained from directing its operation did not change his rights or limit his liability.

"The statute does not affect the common-law liability of an owner present and in control of his car. Neither does it have the effect of making more favorable his position under like circumstances when he sues to recover damages for personal injuries or injury to his car. In either situation, the common-law rule applies, and the negligence of the driver of his car is imputable to him."

It is to be noted that Justice Cardozo of the United States Supreme Court, then Chief Justice of the New York Court of Appeals, concurred in that decision.

From the welter of the confusion in the New York cases and the conflict between the view adopted by the highest New York court in 257 N. Y. 344 (*supra*) and that of Iowa (and several other states) I consider that it can be stated with accuracy that 1714¼ C. C. creates a liability against an owner of a car under the circumstances stated in that section, but has no application whatsoever to any cause of action in his favor.

At common-law, under the circumstances specified in the statute, that is, where there is "no agency" but merely a permissive use, negligence of the driver of a motor vehicle was not attributable to the owner. This statute changed that rule and makes the owner responsible for the negligence of one operating his car with his permission. It deals with the liability of an owner to a third party; that liability, however, does not arise from agency, but is purely statutory.

Judgment is ordered for the plaintiff on the complaint and against the cross-complainant on the cross-complaint.

CHAS. B. MACCOY.

The Present Economic Crisis

By Raymond Ives Blakeslee, of the Los Angeles Bar

IT seems to me that economists are still pursuing the old and worn paths which no longer parallel the radically altered course of human events politically and economically. Let us see what a divergence has taken place, and only consider our own country, because I am convinced that our own country would be far better off in self-contained economic pursuits and relinquishing competition in trade with other countries, as our foreign trade has never been, in modern times, more than negligible in comparison with the total domestic trade. We can swap the six or seven things we don't produce, such as spices and tin, for such things as the countries that produce them desire.

During the last five decades this nation has been engaged economically in a vast campaign of invention and improvement, (and I admit I write these lines mainly with the viewpoint of a patent lawyer), and in the industrialization of such inventions and improvements and the capitalistic organization and promotion thereof; and in the building of a vast network of communications for transmission of intelligence and transportation of goods.

BUTTON-PRESSING AGE

We are fast approaching, as to production of the necessities and many luxuries of life, the button-pressing age. Practically all essential articles of food, raiment and building construction, contemplating the necessities of life, are now turned out in mass production by largely automatic machinery. This being so, in spite of the increase of activities and industries incident to such improvements, such as the tire, auto-servicing, repair and fueling inrustries incident to the automobile trade, I am convinced that ere long the majority of the country's manual workers will soon not be forced to work more than a very few hours a week and a vast number of them not to work at all.

So plethoric are our sources of invention and our natural resources, and so far have improved process and machinery been carried in development, that it is plain stupidity for the residents of this country to be concerned about obtaining the necessities

of life or involved in labor with long hours. In a country so plethoric, the necessities of life, food, shelter and raiment, will eventually become birthrights. Their provision for every man, woman and child will be a governmental and national guarantee, and only those who wish to climb higher and go further will need to toil longer or adopt special vocations. The universal distribution and provision of these necessaries of life will be accomplished with such a modicum of cost, in a country so plethoric, that any tax imposed upon the industries and economics having to do with luxuries and departments of life and industry apart from actual necessities, will be an easy burden.

Useless Jobs

Thus, is it not a fallacy to try to create useless jobs and pay for same with taxes? Again, transportation of goods has been so developed and ramified that could the Federal Government clear up the choked condition which exists due to wasteful competition in transportation, the payment of dividends on watered stock in roads which have been paid for by the public many times over, and lagging response to current demands, the Federal Government, directing such and all other communications in a sane and sound manner, might well cause, and eventually will cause, rapid, responsive and unimpeded transfer of products and goods from one section of the country to other sections at a modicum of cost and for systematic distribution of necessities and luxuries and semi-luxuries.

Again, the industries of the nation must be brought to see that complete service and not dis-service must be the motivation, and industry is rapidly sensing this. The vested interests, the rich and powerful, politically and economically, can only serve their ends best in serving best the ends of the nation and its people at large, for contented people make willing consumers and customers, and expansion of trade. What is best for the sanitation and economies and well being of the people at large, is best for those who produce and distribute what the people need and want.

It seems to me the activities of the Federal Government, which are now so sincerely being directed toward a new condition of affairs, might well give full heed to these interrelated factors, these signs of the times, having to do with avoidance of unnecessary labor, a livelihood for all, a chance to climb for those who will, and a breaking of the chains that retard intercommunication. So shall individualism flourish, existence itself be an assured thing without hellish apprehension, and industry and the populace come into the highest friendship.

Quite likely economists would add to the above views that they involve strict barriers against immigration (we have enough stocks in this country already) and the application of the principles of birth control.

WHAT YOU CAN DO

"Somewhat, you yourselves have neglected opportunities for calling lawyers to account. Let me remind you of what you may do. The punishment to a lawyer is disbarment or suspension. Disbarred or suspended, he may not practice law. That is very severe punishment. His only means of livelihood is destroyed; his position in the community has gone. You can bring about that result. Wherever you live, there are several bar associations to which you may go. There is a grievance committee in each association. You can tell in detail the troubles you have had. You can have the lawyer brought in and questioned by the grievance committees. If you are not satisfied with the particular committee, you can go to several others, county, district, state, American. And in one of those committees you will get redress. Whether or not your own troubles are repaired, the grievance committee will continue; and if the lawyer ought to be disbarred, proceedings to that end will be taken. But, if you do not get results, you can lay the blame to the personnel of the committee to whom you have talked. We know that committees have sometimes been inactive. We think you will find that situation remedied henceforth. We have that much faith in all bar associations, now that you have appealed to our sense of duty."—(Frederick H. Stinchfield, member Executive Committee American Bar Association, in radio address on "Enforcement of the Ethics of the Legal Profession.")

Control of the Practice of Law*

NEARLY three years ago the Justices of the Supreme Judicial Court, answering questions asked by the Senate, gave their advisory opinion that "there is no power in the General Court to compel the judicial department to admit as attorneys those deemed to be unfit to exercise the prerogatives and to perform the duties of an attorney at law." Opinion of the Justices, 279 Mass. 607.

Upon February 1, 1935, the Justices, answering another set of questions as required by the Senate, gave an advisory opinion to the effect that the Legislature may not extend to laymen or corporations the right to practice law. The recent opinion reemphasizes the authority of the judicial department in the following words:

"It is inherent in the judicial department of government under the Constitution to control the practice of the law, the admission to the bar of persons found to be qualified to act as attorneys at law and the removal of those once admitted and found to be unfaithful to their trust."

The Justices also state that no valid distinction can be drawn between court work and office work, saying that the latter is just as much practice of the law as is the former.

The two advisory opinions clear away all uncertainty as to the respective spheres of the legislative and judicial departments with relation to the bar. Under the Constitution, the judicial department is charged with the duty of controlling (1) the practice of the law, (2) admissions to the bar, and (3) removals from the bar, subject to such regulations by the legislature as do not encroach upon the judicial authority under the Constitution.

The subject of admissions to the bar has been taken care of by the new rules promulgated last June by the Supreme Judicial Court.

The other two matters within the control of the judicial department, unlawful practice and removal, greatly concern the bar. Obviously, the judiciary is dependent upon others for information enabling it to act upon those matters. The bar is the natural protector of its own rights, privileges and duties. To it is necessarily committed the task of informing the judiciary of unlawful practices by laymen and of breaches of their oaths by attorneys. To perform these responsibilities satisfactorily and uniformly throughout the Commonwealth requires an integration and unity in the bar which have not been attained, and a treasury which is non-existent. Lacking any better method, bar associations have attempted to function in these matters. If the several associations had adequate funds and if their membership included a large majority of the lawyers, they might, even under the heavy handicaps imposed by existing methods of procedure, be able to combat the increasing demoralization of the bar.

The fact is, however, that bar associations generally are finding it progressively difficult to raise sufficient funds to carry on any disciplinary proceedings at a time when there is urgent need for extending the work. Another unpleasant fact is that a minority of the bar, and a small minority at that, is defraying all the costs of grievance work.

The Justices in their recent advisory opinion envisage a high standard for the bar, saying "A dual trust is imposed on attorneys at law: they must act with all good fidelity both to the courts and to their clients. They are bound by canons of ethics which have been the growth of long experience and which are enforced by the courts."

The yawning gap between the standard thus laid down and current practices is well known to the bar.

* Boston Bar Association Bulletin for March.

BAR CONVENTION

(Continued from page 148)

The special trains bearing the delegates from the east will stop at Grand Canyon and the great Boulder Dam on the Colorado River, in coming west, and at Yosemite, San Francisco and Yellowstone Park in returning east. So you see, the trip is going to be worthwhile from a sightseeing standpoint, as well as the opportunity to attend a convention which will no doubt be productive of matters of vital interest to lawyers throughout the United States.

Law Institute Restatement Making Rapid Progress

WHETHER or not the bite of a watch-dog off duty is privileged to the same degree as the bite of a watch-dog on duty, was one of the questions which enlivened the deliberations of the mid-winter meeting of the Council of the American Law Institute held in the Bar Association Building, New York City, the last of January and the first two days of February. The question arose over a section in the preliminary draft of the chapter on Absolute Liability of the Restatement of Torts. As presented by the Reporter and his advisers, the section concerning watch-dogs stated that a possessor of land or chattels is privileged to protect his property by keeping therein a watch-dog under the same conditions as those which fix his privilege to use a mechanical protective device.

A comment to this rule asserted that if the circumstances are such as to give the possessor of land the privilege to employ a watch-dog as protector, the dog, even during the time when it is not busy at its work on the premises, if kept with the care which its dangerous nature requires, is not kept at the risk of absolute liability, such as attaches to the possession of abnormally dangerous domestic animals. The phrase, "an abnormally dangerous domestic animal," means an animal whose behavior is not common to its class, such as a Great Dane in the habit of leaping in play on children or a horse playfully putting its forefeet on people's shoulders. It does not include stallions, bulls or other stud animals. Ferocity, in other than a watch-dog, would stamp the dog as abnormally dangerous. The guiding consideration in fixing the privilege is the social purpose served by the animal.

Shall the owner of live-stock be compelled to fence them *in*, or the owner of premises upon which they may roam be compelled to fence them *out*, was another question debated. The draft of the Reporter, Prof. Francis H. Bohlen of the University of Pennsylvania Law School, stated the English common law rule to the effect that a possessor of live-stock which stray upon the land of another is liable for their intrusion and any consequent harm, although the possessor used every care to prevent the straying. Although a Special Note called attention to the fact that in many states the common law rule had been rejected, some members of the Council felt this should be more particularly emphasized.

Work in progress, representing a greater advance in the task of Restatement than has previously been achieved in any similar period, was evidenced by new or revised drafts in Trusts, Torts, Property, Quasi-Contracts, Sales of Land, and the Administration of Criminal Law.

New Officers and Board of Trustees—1935-1936
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